IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10760 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Petitioner(s)
Versus
THAKOR HATHAJI MOHANJI - Respondent(s)

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Appearance :
MS MANISHA LAVKUMAR AGP for Petitioner(s) : 1,
MR MP PRAJAPATI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 03/07/2007

ORAL JUDGMENT

1. Heard Ms.Manisha Lavkumar, learned Assistant Government Pleader for the State and Mr.M.P. Prajapati, learned counsel for the respondent.

2. The State, being aggrieved by the impugned Award dtd.3/5/1999 passed by the Presiding Officer, Labour Court, Kalol in Reference (LCK) No.3 of 1989, is before this Court with a submission that on the facts and in the circumstances of the case, the court below was unjustified in directing reinstatement with 50% back wages.

3. It is not in dispute before me that the respondent was employed as a workman w.e.f. 1/4/1982 and worked upto 15/11/1986. It is also not dispute before me that in the year 1986 itself, the petitioner had worked for almost about 295 days.

4. The case of the petitioner is that on 14/11/1986, the petitioner was assigned some work relating store but the respondent workman did not accept the order, created a scene and thereafter caused commotion and again threatened the people / labour that if they join the work, they would face dire consequences, their children and wives would be kidnapped. It appears that immediately thereafter, taking into consideration the alleged conduct of the workman, a police report was lodged, the police, probably, arrested the workman and thereafter filed a chargesheet in the criminal court.

Undisputedly, after 15/11/1986, the respondent workman was not allowed to work. In the criminal case, the said respondent was acquitted on 29/4/1988 but he was taken in the service somewhere in the year 1990. It appears that in the meanwhile, the petitioner got the matter referred to the Labour Court, the Labour Court, after registering the matter issued notices to the parties, allowed them to file their pleadings and permitted the parties to lead evidence. After hearing the parties, the Labour Court held that as the respondent workman had worked for more than 240 days within 12 calender months just preceding the date of retrenchment and as the provisions of sec.25-F of Industrial Disputes Act, were not observed, the action on the part of the present petitioner was bad, it accordingly directed reinstatement with 50% back wages.

5. Ms.Manisha Lavkumar, learned Assistant Government Pleader for the State submits that the court below was unjustified in directing reinstatement w.e.f. 16/11/1986, less appreciating that the respondent was facing a criminal case and in the year 1990, the respondent was taken back in service. It is also submitted by her that present could not be a case for award of back wages,

specially when the respondent, after his fresh engagement is working with the present petitioner.

6. Mr.Prajapati, learned counsel for the other-side has opposed the writ application submitting inter-alia that the court below was absolutely justified in directing reinstatement and awarding back wages.

7. From the arguments of the learned Assistant Government Pleader for the State it appears that they are treating the respondent to be in service continuously from 1990. It is to be seen that from the year 1990 to 1994, the respondent has been given work intermittently and not regularly. In none of the year, he had been given work for 240 or more days. If the Reference is rejected and the respondent's appointment is taken to be a fresh appointment, then, in view of the working days, he would have no protection under sec.25-F of the Industrial Disputes Act.

8. If from the say of the learned Assistant Government Pleader it is clear that the petitioner had worked for 295 days in the year 1986, then, obviously, the petitioner were required to observe true spirit of sec.25-F of the Industrial Disputes Act. If the preconditions of work for 240 or more days and non-issuance of the retrenchment

notice or payment in cash in lieu of such notice along with the reasons for retrenchment, are missing, then, such a removal would amount to illegal retrenchment.

9. The petitioner's act in not permitting the respondent to come to work from 15/11/1986 onwards, would amount to illegal retrenchment. The court below was certainly justified in directing reinstatement of the respondent workman.

10. So far as the back wages are concerned, the Court below has already awarded 50% back wages. However, while maintaining the impugned award, I will give a liberty to the petitioner to make an application along with the calculation, in the Labour Court that for a particular period, the respondent had worked, therefore, he may not be entitled to any further benefits or if he has been paid anything less than 50%, then, the respondent may be asked to receive the balance amount and not 50% back wages for the whole of the year.

11. If such an application is filed, the Labour Court shall issue notice of the application to the other-side and after hearing the parties, shall decide the application on its own merits.

12. On the merits, I find no reason to interfere, but, however,

I dismiss the petition with the liberty aforesaid. Rule is discharged. Interim relief, if any, is vacated. No costs.

(R.S. GARG, J.)

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